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EXAMINER

WOODS, ERIC V

ART UNIT PAPER NUMBER

2672

DATE MAILED: 02/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/690,428

Applicant(s)

BENNETT, WILLIAM G.

Examiner

Eric Woods

Art Unit

2672

– The MAILING DATE of this communication appears on the cover sheet with the correspondence address –

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 October 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION***Response to Arguments***

The objections to the drawings stand withdrawn in view of applicant's amendments.

The rejection of claims 1-5 and 12-16 under 35 U.S.C. 112, second paragraph, for use of the terms 'roughly approximate' stand withdrawn in view of applicant's amendment to change the terms to read 'approximately the same as'.

However, it is noted that both according to the canons of claim construction and according to USPTO policy, the change in 'roughly approximate' to 'approximately the same as' constitutes a narrowing of claim scope, and as such justifies new grounds of rejection, since the amendment was made pursuant to a rejection in order to comply with statutory requirements. According to the doctrine set forth in the various *Festo* decisions, this results in the creation of a prosecution history estoppel that also results in the examiner being able to apply new art.

Applicant's arguments are thusly moot in view of the new grounds of rejection below.

Applicant's claims are rejected under two combinations of reference due to an interpretation issue, where certain issues regarding the term 'adjust' and 'user' are regarded by examiner to be ambiguous.

Claim Objections

Applicant is advised that should claims 1-6 be found allowable, claims 7 and 9-12 will be objected to under 37 CFR 1.75 as being a substantial duplicate

Art Unit: 2672

thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Decreamer (US 5,486,870 A) over MacLeod.

Claim 6 is a duplicate of claim 1 after the amendment, except that the user does the adjusting. With the system of Decreamer, the user does the adjusting. Claim 1 is merely slightly broader, with automatic means for performing the adjusting being possible.

Art Unit: 2672

Claims 12 and 17 are hardware implementing the method of claim 1.

Decreamer is obviously hardware, as in MacLeod, which would have a scaler which implemented the below method since they prima facie execute it.

As to claims 1, 6, 12, and 17,

A method for viewing an image on a display comprising: (Preamble is not given patentable weight, since it only recites a summary of the claim and/or an intended use, and the process steps and/or apparatus components are capable of standing on their own; see *Rowe v. Dror*, 112 F.3d 473, 42 USPQ2d 1550 (Fed. Cir. 1997), *Pitney Bowes, Inc. v. Hewlett-Packard Co.*, 182 F.3d 1298, 1305, 51 USPQ2d 1161, 1165 (Fed. Cir. 1999), and the like.)

-Receiving an image having a first aspect ratio; (Decreamer 1:15-40, where most television signals are in 4:3 mode; motion pictures can have an aspect ratio of 16:9)(MacLeod receives signals in 4:3 and/or 16:9 aspect ratios (note 1:4-2:50))

-Displaying the image on the display, which has a second aspect ratio different from the first aspect ratio; and (Decreamer teaches that such images are displayed on the screen, as in Figures 1-3, and the hardware to control such is shown in Figures 5 and 6. Displays are taught to have aspect ratios of 16:9 or 4:3, in any case the situation of a 4:3 signal displayed on a 16:9 display is discussed in 1:10-40, 2:50-3:10, and especially 3:15-52)(MacLeod teaches a display having an aspect ratio that is exactly the geometric mean of 4:3 and 16:9)

-Adjusting the image so that an amount of the image that is lost is approximately the same as an amount of the screen that remains unfilled with the image.

(Decreamer shows in Figures 1-3 the various situations that can arise with

Art Unit: 2672

aspect ratio differences, including when subtitles are present. In Figure 1, the typical letterbox situation is shown, with black bands on the side of the screen. Figure 2 shows the typical distortion that occurs when such a picture is scaled to fit the screen. Figure 3 shows how a certain amount of image is cut off on the top and bottom of the viewable area when the image is larger than the screen (e.g. pan-and-scan mode) – explained in 3:40–4:30. It is further explained why the user would want to adjust the image in a situation such as Figure 4 – see 4:39–55. The user is allowed to adjust the size of the image in the vertical and horizontal direction manually (see abstract, 1:7–12, 2:4–15, and esp. 2:32–38). Therefore, the user can continually adjust the amount of image that is lost as above.)(The aspect ratio of MacLeod is provided as being precisely (ideally) the geometric mean between 4:3 and 16:9 (Abstract, 2:50–3:18). This particular aspect ratio is shown in Figures 6–9 to be the ideal compromise for viewing both signals, as only 13.4% of the screen is unused in either circumstance (5:3–5:18), versus 25% for normal situations (4:30–50), where techniques such as “overscan” can be used to compensate for the gaps, such that the image would have almost no border (e.g. utilize of 91–95% of the screen, see 5:30–48).)

Decreamer teaches all of the limitations of the instant claim except expressly adjusting the picture so that the amount of picture that is lost is approximately the same as the amount of blank space on the screen. With the system of Decreamer, the user can adjust the aspect ratio in the vertical and horizontal directions and control the amount of blank space and amount of video cropped as explained above. MacLeod teaches how and why one would adjust

Art Unit: 2672

the aspect ratio of the display to find an optimum viewing size for a picture having an aspect ratio different than that of the display device.

The existence of MacLeod conclusively proves that the problem of the screen not adequately displaying two different aspect resolutions has been considered, in light of the various modes of operation (Letterbox, Stretch, Zoom, etc.) MacLeod teaches a display with an ideal aspect ratio that is the geometric mean between 4:3 and 16:9, which MacLeod teaches cuts the unused area of the screen to 13.4%, not including any overscan (5:2-5:14) where MacLeod also teaches that with overscan, and/or the use of prior art systems that clip and distort the image (5:40-50) that any border areas can be eliminated. Clearly, the stretch-operating mode (and allowing the user to adjust the actual width and height of the picture) constitutes "prior art systems that distort the image". Therefore, MacLeod provides one prior art solution to the problem, but performs much of the correction of the image via hardware (actually changing the physical aspect ratio of the display), and teaches that this provides the same area minimization as applicant cites in the abstract of the instant application (e.g. 13%), where with some "overscan" the total usable display portion can go as high as 95% as noted above. **Note that MacLeod is being used as a teaching reference here, as to why this particular aspect ratio is desirable, in that produces a screen with an amount of blank space approximately equal to the amount of image that was cropped or not shown.**

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Decreamer to adjust the image to

Art Unit: 2672

have an aspect ratio close to that of 1.54:1 when a signal having an aspect ratio different than that of the display (e.g. 4:3 signal shown on a 16:9 display), where this would be the median between the two aspect ratios and show the most image possible without distorting it, where such adjustment means are shown in Decreamer Figures 4A and 4B. Additional motivation would be such that the user would see the most possible image without distortion. Also, it would have been obvious to have the user make such a modification, since in Decreamer the user can modify the aspect ratio manually. The claim language does not require that a computer do the adjusting; it is broad enough that a user could do so.

Additionally, applicant is reminded of *In re Venner* – 262 F.2d 91, 95, 120 USPQ 193, 194 (CCPA 1958)(see MPEP 2144.04, section III), where it was held that automating a manual activity was not patentable (and the converse has also been held to be true, where making an automatic activity adjustable is not per se patentable).

As to claim 17, Decreamer meets the additional limitation of a user interface where the user enters a value that the video scaler uses to control the size of the image, where the user utilizes the remote control to enter the number (2:10-15, 6:1-10). The user can specify the new aspect ratio and/or adjust the scaler with a plurality of buttons. It is notoriously well known that remote controls for televisions have number keys as well. It would have been obvious to allow the user to enter a desired aspect ratio using the remote control for at least the above reasons, since Decreamer allows the user to modify it in any case.

Art Unit: 2672

As to claims [2, 8, 12, and 18] and [3, 9, 13, and 19], Decreamer and MacLeod both expressly teach aspect ratios of 4:3 and 16:9 for television signals.

As to claims 4, 10, 15, and 20, Decreamer clearly teaches the use of a display having an aspect ratio of 16:9 and a signal with an aspect ratio of 4:3 in 3:14-30.

As to claims 5, 11, 16, and 21, Decreamer and MacLeod both teach that televisions or displays can have an aspect ratio of 4:3. Decreamer teaches that movies have an aspect ratio of 16:9. It would have been notoriously obvious that the methods taught by Decreamer to scale 4:3 images to fit a 16:9 display would be equally applicable to the opposite situations. Further, MacLeod also states in the background that it is common to view a 16:9 signal on a 4:3 display (1:4-45 for example, as well as 1:45-2:16).

As to claim 7, Decreamer clearly teaches that the user is allowed to adjust the image freely between certain limits (see 4:10-35). Now, it would be obvious that since Decreamer only discusses those aspect ratios and the invention was ostensibly created to obviate the problem of obscured subtitles, it would have been obvious that there would be an upper limit to the amount of adjustment that was possible (simply by virtue of the fact that the correction curve was parabolic (2:1-50), such that there would be an upper limit to how much the image could be adjusted (e.g. no adjustment for a native signal (4:3 on a 4:3 display or 16:9 on a 16:9 display))). Now, as stated above, since MacLeod establishes that there is an ideal aspect ratio or 'sweet spot' where a minimum amount of screen is left

Art Unit: 2672

blank versus the amount cropped off the edges, it would have been obvious to direct the user to that point – since in claim 6, the user **does** adjust the image to that point. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to limit the amount of adjustment that the user can apply to that which is sufficient to maximize the amount of viewable image versus that which is removed.

As to claims 22 and 23, MacLeod clearly teaches that the optimum amount of area lost is 13.4%, which when rounded down is 13%, which therefore teaches this claim, whether or not the signal and display are 4:3 and 16:9.

Claims 1-6 and 8-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Decreamer (US 5,486,870 A) over MacLeod in view of Chung et al (US PGPub 2003/0192407).

Claim 6 is a duplicate of claim 1 after the amendment, except that the user does the adjusting. With the system of Decreamer, the user does the adjusting. Claim 1 is merely slightly broader, with automatic means for performing the adjusting being possible.

Claims 12 and 17 are hardware implementing the method of claim 1. Decreamer is obviously hardware, as in MacLeod, which would have a scaler which implemented the below method since they prima facie execute it.

As to claims 1, 6, 12, and 17,
A method for viewing an image on a display comprising: (Preamble is not given patentable weight, since it only recites a summary of the claim and/or an

Art Unit: 2672

intended use, and the process steps and/or apparatus components are capable of standing on their own; see *Rowe v. Dror*, 112 F.3d 473, 42 USPQ2d 1550 (Fed. Cir. 1997), *Pitney Bowes, Inc. v. Hewlett-Packard Co.*, 182 F.3d 1298, 1305, 51 USPQ2d 1161, 1165 (Fed. Cir. 1999), and the like.)

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-Displaying the image on the display, which has a second aspect ratio different from the first aspect ratio; and (Decreamer teaches that such images are displayed on the screen, as in Figures 1-3, and the hardware to control such is shown in Figures 5 and 6. Displays are taught to have aspect ratios of 16:9 or 4:3, in any case the situation of a 4:3 signal displayed on a 16:9 display is discussed in 1:10-40, 2:50-3:10, and especially 3:15-52)(MacLeod teaches a display having an aspect ratio that is exactly the geometric mean of 4:3 and 16:9)

-Adjusting the image so that an amount of the image that is lost is approximately the same as an amount of the screen that remains unfilled with the image.

(Decreamer shows in Figures 1-3 the various situations that can arise with aspect ratio differences, including when subtitles are present. In Figure 1, the typical letterbox situation is shown, with black bands on the side of the screen. Figure 2 shows the typical distortion that occurs when such a picture is scaled to fit the screen. Figure 3 shows how a certain amount of image is cut off on the top and bottom of the viewable area when the image is larger than the screen (e.g. pan-and-scan mode) – explained in 3:40-4:30. It is further explained why

Art Unit: 2672

the user would want to adjust the image in a situation such as Figure 4 – see 4:39-55. The user is allowed to adjust the size of the image in the vertical and horizontal direction manually (see abstract, 1:7-12, 2:4-15, and esp. 2:32-38). Therefore, the user can continually adjust the amount of image that is lost as above.)(The aspect ratio of MacLeod is provided as being precisely (ideally) the geometric mean between 4:3 and 16:9 (Abstract, 2:50-3:18). This particular aspect ratio is shown in Figures 6-9 to be the ideal compromise for viewing both signals, as only 13.4% of the screen is unused in either circumstance (5:3-5:18), versus 25% for normal situations (4:30-50), where techniques such as “overscan” can be used to compensate for the gaps, such that the image would have almost no border (e.g. utilize of 91-95% of the screen, see 5:30-48).)(Chung et al (US PGPub 2003/0192407), which teaches a system where a ‘hot area’ is specified that the user is navigating through for a pan-scan system, where the underlying 16:9 signal is still present and this window is user-defined and manipulated [0017, 0113, 0118–0123] and Figures 8A-8C (as an example), and the size of the hot zone is not set, nor is its location [0121].)

Decreamer teaches all of the limitations of the instant claim except expressly adjusting the picture so that the amount of picture that is lost is approximately the same as the amount of blank space on the screen. With the system of Decreamer, the user can adjust the aspect ratio in the vertical and horizontal directions and control the amount of blank space and amount of video cropped as explained above. MacLeod teaches how and why one would adjust

Art Unit: 2672

the aspect ratio of the display to find an optimum viewing size for a picture having an aspect ratio different than that of the display device.

The existence of MacLeod conclusively proves that the problem of the screen not adequately displaying two different aspect resolutions has been considered, in light of the various modes of operation (Letterbox, Stretch, Zoom, etc.) MacLeod teaches a display with an ideal aspect ratio that is the geometric mean between 4:3 and 16:9, which MacLeod teaches cuts the unused area of the screen to 13.4%, not including any overscan (5:2-5:14) where MacLeod also teaches that with overscan, and/or the use of prior art systems that clip and distort the image (5:40-50) that any border areas can be eliminated. Clearly, the stretch-operating mode (and allowing the user to adjust the actual width and height of the picture) constitutes "prior art systems that distort the image". Therefore, MacLeod provides one prior art solution to the problem, but performs much of the correction of the image via hardware (actually changing the physical aspect ratio of the display), and teaches that this provides the same area minimization as applicant cites in the abstract of the instant application (e.g. 13%), where with some "overscan" the total usable display portion can go as high as 95% as noted above. **Note that MacLeod is being used as a teaching reference here, as to why this particular aspect ratio is desirable, in that produces a screen with an amount of blank space approximately equal to the amount of image that was cropped or not shown.**

Art Unit: 2672

Chung teaches the idea of a viewport, as noted above, where said viewport extends over the entirety of the 16:9 image (a viewport being a window or viewable area).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Decreamer to adjust the image to have an aspect ratio close to that of 1.54:1 when a signal having an aspect ratio different than that of the display (e.g. 4:3 signal shown on a 16:9 display), where this would be the median between the two aspect ratios and show the most image possible without distorting it, where such adjustment means are shown in Decreamer Figures 4A and 4B. Additional motivation would be such that the user would see the most possible image without distortion. Also, it would have been obvious to have the user make such a modification, since in Decreamer the user can modify the aspect ratio manually. The claim language does not require that a computer do the adjusting; it is broad enough that a user could do so.

Chung is incorporated because it further strengthens the argument for user-configurability. In light of Decreamer, Chung suggests a user-controlled window that would the user could utilize to navigate around a 16:9 signal on a 4:3 display (as an example), where the size of the window would be adjustable, which supports the holding of Decreamer to allow the user to adjust the aspect ratio. Chung is merely used as a teaching reference.

Additionally, applicant is reminded of *In re Venner* – 262 F.2d 91, 95, 120 USPQ 193, 194 (CCPA 1958)(see MPEP 2144.04, section III), where it was held that automating a manual activity was not patentable (and the converse has also

Art Unit: 2672

been held to be true, where making an automatic activity adjustable is not per se patentable).

As to claim 17, Decreamer meets the additional limitation of a user interface where the user enters a value that the video scaler uses to control the size of the image, where the user utilizes the remote control to enter the number (2:10-15, 6:1-10). The user can specify the new aspect ratio and/or adjust the scaler with a plurality of buttons. It is notoriously well known that remote controls for televisions have number keys as well. It would have been obvious to allow the user to enter a desired aspect ratio using the remote control for at least the above reasons, since Decreamer allows the user to modify it in any case.

As to claims [2, 8, 12, and 18] and [3, 9, 13, and 19], Decreamer and MacLeod both expressly teach aspect ratios of 4:3 and 16:9 for television signals.

As to claims 4, 10, 15, and 20, Decreamer clearly teaches the use of a display having an aspect ratio of 16:9 and a signal with an aspect ratio of 4:3 in 3:14-30.

As to claims 5, 11, 16, and 21, Decreamer and MacLeod both teach that televisions or displays can have an aspect ratio of 4:3. Decreamer teaches that movies have an aspect ratio of 16:9. It would have been notoriously obvious that the methods taught by Decreamer to scale 4:3 images to fit a 16:9 display would be equally applicable to the opposite situations. Further, MacLeod also states in the background that it is common to view a 16:9 signal on a 4:3 display (1:4-45 for example, as well as 1:45-2:16).

Art Unit: 2672

As to claim 7, Decreamer clearly teaches that the user is allowed to adjust the image freely between certain limits (see 4:10-35). Now, it would be obvious that since Decreamer only discusses those aspect ratios and the invention was ostensibly created to obviate the problem of obscured subtitles, it would have been obvious that there would be an upper limit to the amount of adjustment that was possible (simply by virtue of the fact that the correction curve was parabolic (2:1-50), such that there would be an upper limit to how much the image could be adjusted (e.g. no adjustment for a native signal (4:3 on a 4:3 display or 16:9 on a 16:9 display))). Now, as stated above, since MacLeod establishes that there is an ideal aspect ratio or 'sweet spot' where a minimum amount of screen is left blank versus the amount cropped off the edges, it would have been obvious to direct the user to that point – since in claim 6, the user **does** adjust the image to that point. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to limit the amount of adjustment that the user can apply to that which is sufficient to maximize the amount of viewable image versus that which is removed.

As to claims 22 and 23, MacLeod clearly teaches that the optimum amount of area lost is 13.4%, which when rounded down is 13%, which therefore teaches this claim, whether or not the signal and display are 4:3 and 16:9.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL.**

Art Unit: 2672

See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

This action is properly made final because the original claims were indefinite. Applicant made an amendment to comply with a statutory requirement that is clearly pertinent to patentability, which creates a prosecution history estoppel as per *Festo*. Additionally, the amendment narrowed the scope of the claims and made them more definite, thus necessitating a search for new art and its proper application. There exist no grounds for protest under 1.181.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eric Woods whose telephone number is 571-272-7775. The examiner can normally be reached on M-F 7:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Razavi can be reached on 571-272-7664. The

Art Unit: 2672

fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Eric Woods

February 1, 2006

A handwritten signature in black ink, appearing to read "Ryan Yang", is written in a cursive style.